

PAYMENT IN LIEU OF PROPERTY TAX DEVELOPMENT AGREEMENT

This payment in lieu of property tax development agreement (the “Agreement”), made and entered into this ___ day of _____, 2021, by and between **BLOCK V, LLC**, a North Dakota limited liability company, whose address is 4000 Garden View, Suite 101, Grand Forks, North Dakota 58201-7421 (referred to herein as the “Developer”), the **CITY OF GRAND FORKS**, a North Dakota municipal corporation whose principal office and mailing address is 255 North 4th Street, Grand Forks, ND 58201 (hereinafter the “City”), and the **GRAND FORKS GROWTH FUND**, a Jobs Development Authority, whose mailing address is 255 North 4th Street, P.O. Box 5200, Grand Forks, North Dakota 58203 (hereinafter referred to as the “JDA”).

RECITALS

- 1.** The City, pursuant to its policy for property tax incentives, has had the Block V Project reviewed and analyzed by a third-party which found that without the assistance of the herein described property tax incentive, the Block V Project would not be deemed financially feasible.
- 2.** The City, pursuant to its policy for property tax incentives, has had the Block V Project reviewed by its Local Government Advisory Committee, which provided a consensus and non-binding recommendation to move forward with the Block V Project, with the proposed property tax incentive as more particularly described herein.
- 3.** The City, pursuant to N.D.C.C. §§ 40-05-24 and 40-57.1-03(7), has obtained the consent of the Grand Forks Public School District and Grand Forks County to participate in the property tax incentive that will be in the form of a payment in lieu of taxes under N.D.C.C. § 40-57.1-03(2) (“PILOT”) for the Block V Project.
- 4.** On or about December 9, 2020, the City Planning Department consulted and briefed the North Dakota Department of Commerce regarding the Block V Project and the herein described property tax incentive for the Block V Property.
- 5.** The City has conducted public hearings on the Block V Project, the proposed PILOT, and pursuant to the City’s policy and N.D.C.C. ch. 40-57.1 has made the necessary findings and determinations, including that the herein described PILOT is in the best interest of the City, and approved of the said PILOT and this Agreement.

NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

SECTION 1 – DEFINITIONS

The following defined terms and definitions apply to this Agreement:

1.1 “**Agreement**” means this Payment in Lieu of Property Tax Development Agreement.

1.2 “**Assessment Date**” means February 1 of each year, being the date real property must be listed and assessed every year in reference to its value under N.D.C.C. § 57-02-11.

1.3 “**Block V Guaranty**” means the Guaranty attached hereto as Exhibit 1.3.

1.4 “**Block V Guarantor**” means each Person who has executed the Guaranty. Each officer, manager, director, governor, and/or member of the Developer shall be required to be a Guarantor.

1.5 “**Block V Loan**” means the loan to be made by the JDA to the Developer in the total principal amount of \$900,000.00 upon satisfaction of the conditions precedent described in Section 4.1.3 below.

1.6 “**Block V Mortgage**” means the mortgage attached hereto as Exhibit 1.6.

1.7 “**Block V Note**” means the promissory note attached hereto as Exhibit 1.7.

1.8 “**Block V PILOT**” means the property tax incentive in the form of a payment in lieu of property tax pursuant to N.D.C.C. § 40-57.1-03(2), for the Block V Property, as determined, described and calculated under Section 3.2 below.

1.9 “**Block V PILOT Application**” means the application for property tax incentives for new or expanding businesses and any and all other information and documents submitted to the City by the Developer requesting the Block V PILOT and loan from the JDA.

1.10 “**Block V PILOT Resolution**” means the Resolution of the City Council dated October __, 2021 approving Block V PILOT and this Agreement.

1.11 “**Block V Plans**” means the detailed and specific plans and specifications for the Construction and installation of the Block V Project, including the Block V PILOT Application.

1.12 “**Block V Project**” means the development, redevelopment and renovation of the Block V Property in accordance with the Block V Plans and this Agreement, which includes the following: (a) renovation of the commercial floors on the lower and elevated first floor levels and the remaining upper four floor levels to contain a mix of studio, one, two and three bedroom units, (b) the installation of a new elevator to address ADA compliance requirements, (c) installation of new exterior windows, (d) complete renovation of the attached three story Annex building to include first floor commercial space and second and third floor residential units, and (e) a possible addition of an outdoor roof deck patio.

1.13 “**Block V Property**” means the following described parcel of real property, and the five (5) story building and three (3) story annex building located thereon, having a street address of 2 North 3rd Street, Grand Forks, ND 58202 and more particularly described as follows:

The Front 100 feet of Lot 6, in Block 24, Subdivision of Blocks 16, 17, and 24 of the Town of Grand Forks, ND

AND

The Rear 50 feet of the Front 150 feet of Lots 4, 5, and 6, in Block 24, Subdivision of Blocks 16, 17 and 24 of the Town of Grand Forks, ND

1.14 “Block V True and Full Value” means the amount calculated under Section 3.2.2.

1.15 “Calendar Day” shall mean Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday. When this Agreement requires a calculation of the number of Calendar Days, each day is counted, regardless of whether it is a Saturday, Sunday or holiday described in N.D.C.C. § 1-03-01.

1.16 “Certificate of Occupancy” means a certificate of occupancy applied for under City Code § 18-0507 and to be subsequently issued to the Developer for any part of the Block V Project upon the City finding the terms, conditions and requirements under the City Code for such certificate of occupancy have been satisfied.

1.17 “Change in the Law” means the introduction or repeal (in whole or in part) of, the amendment, alteration or modification to, or the change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any applicable laws, standards, practices, or guidelines issued or published by any governmental entity that occur after the Effective Date that are binding on the City, the JDA, the Developer or the Block V Property.

1.18 “City” means the City of Grand Forks, North Dakota.

1.19 “City Assessor” means the Person appointed and acting as the city assessor for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0601.

1.20 “City Code” means Grand Forks City Code of 1987.

1.21 “City Council” means the city council of the City, which is composed of the Mayor and council members.

1.22 “City Engineer” means the Person appointed and acting as the city engineer for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0501.

1.23 “City Inspector” means the Person appointed and acting as the city inspector and head of the City inspection department.

1.24 “City Planner” means the Person appointed and acting as the city planner for the City.

1.25 “Construction” or “Construction Services” means erecting, building, assembling, constructing, installing and/or performing any services or work to erect, build, assemble, construct and/or install any portion of the Components.

1.26 “Developer” means collectively Block V, LLC, a North Dakota limited liability company and each of their respective employees, agents, representatives and contractors.

1.27 “Developer Engineer and Architect” means the Person who is a professional engineer licensed in North Dakota under N.D.C.C. ch. 43-19.1 and the Person who is an architect licensed in North Dakota under N.D.C.C. ch. 43-03 engaged by the Developer to prepare the Block V Plans.

1.28 “Effective Date” means _____, 2021.

1.29 “Exhibit” means the documents designated as an exhibit and attached to this Agreement. Any reference to an Exhibit in this Agreement shall mean such document and all information contained on the document is incorporated into this Agreement as if fully set forth herein. In the event of any conflict of any provision of an Exhibit and the provisions of this Agreement, the provisions of the Agreement shall prevail.

1.30 “Finally Completed” means the date the Block V Project has been finally and fully completed to the satisfaction of and accepted by the City, as determined by the City Engineer, City Planner and City Inspector in the exercise of their respective discretion. The City Engineer, City Planner and City Inspector shall provide written notice to the Developer upon determining the Public Components are Finally Completed.

1.31 “Good Faith” means observance of reasonable commercial standards of fair dealing in a given trade or business.

1.32 “Good Industry Practice” means the industry practices and standards that would be exercised by a prudent and experienced developer, designer, contractor, operator, or maintenance provider engaged in the same kind of undertakings or under similar circumstances.

1.33 “Incremental Property Value” means the true and full value, determined pursuant to N.D.C.C. §§ 57-02-01(15) and 57-02-27.1 for property tax purposes, of all improvements, buildings and other structures (subject to property taxation) located on the Block V Property on every Assessment Date occurring after the Block V Project is Finally Completed. The Incremental Property Value excludes the true and full value of the Block V Property land. The Parties anticipate the first Assessment Date that will occur after the Block V Project is Finally Completed will be February 1, 2023.

1.34 “JDA” means the Grand Forks Growth Fund, a Jobs Development Authority.

1.35 “Original Property Value” means \$1,558,200.00, being the true and full value of all improvements, buildings and other structures (subject to property taxation) located on the Block V Property, determined pursuant to N.D.C.C. §§ 57-02-01(15) and 57-02-27.1 for

property tax purposes, on the date of this Agreement. The Original Property Value excludes the true and full value of the Block V Property land.

1.36 “Other Block V Agreements” mean the Block V Note, Block V Mortgage, Guaranty, Block V Plans, Block V PILOT Application and any and all other agreements or instruments now or hereafter executed and delivered by the Developer and/or any other Person in connection with the performance of this Agreement, as such agreements may be amended or supplemented from time to time.

1.37 “Parties” means the City, the JDA and the Developer.

1.38 “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

1.39 “Substantially Completed” means the time at which the Block V Project has progressed to the point where, in the opinion of City, as determined by the City Engineer, City Planner and City Inspector in the exercise of their respective discretion, the Block V Project is sufficiently complete, in accordance with the terms hereof, so that the Block V Project can be utilized for the purposes for which the Block V Project is intended. The City Engineer, City Planner and City Inspector shall provide written notice to the Developer upon determining the Block V Project is Substantially Completed.

1.40 “Targeted Property Value” means \$5,200,000.00, being the true and full value determined under N.D.C.C. §§ 57-02-01(15) and 57-02-27.1, the Developer estimates will be reached for all improvements, buildings and other structures (subject to property taxation) located on the Block V Property Block V Property upon the Block V Project being Finally Completed. The Targeted Property Value excludes the true and full value of the Block V Property land.

1.41 “Usual and Customary” means the reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the Parties or so well established, general, and uniform that they must be presumed to have acted with reference thereto.

SECTION 2 – DEVELOPMENT OF BLOCK V PROPERTY

2.1. Development/Construction of Block V Project.

2.1.1 The Developer, at the Developer’s cost and expense, shall be solely responsible for the design, Construction and installation of the Block V Project.

2.1.2 The Block V Plans shall be prepared, developed, created and approved by the Developer Engineer and Architect. The appropriate professional engineer and architect

endorsement shall be placed on the Block V Plans, and/or any other documents, plans, or plats relating to or arising from the Block V Plans.

2.1.3 Unless otherwise agreed to by the City in writing, Construction of the Block V Project shall commence on or before October ____, 2021.

2.1.4 Unless otherwise agreed to by the City in writing, the Block V Project shall be Substantially Completed by November 1, 2022 and Finally Completed by December 1, 2023, and a Certificate of Occupancy for the Block V Property resulting from the Block V Project shall be obtained by the Developer on or before December 1, 2022.

2.1.5 The Developer shall be solely responsible for any and all operations, maintenance and repairs of the Block V Project and the Block V Property.

2.2. General Development/Construction Requirements.

2.2.1 The following shall be applicable to and be complied with by the Developer for the Construction and installation of the Block V Project:

(a) Construction of the Block V Project shall be in accordance with the Block V Plans and in compliance with the City Code and all applicable federal, state and other local laws. Without in any limiting the foregoing, but in addition thereto, the Block V Project shall be constructed in compliance with the City's NDFPDES stormwater permit No. NDR04-0000, and the Developer Engineer and Architect shall provide a written certification to the City of such compliance with said permit and all stormwater discharge limitations.

(b) The Developer shall require all contractors or sub-contractors performing any Construction Services to have a payment and performance bond in the amount not less than the total price of the Construction contract with such contractor or sub-contractor.

(c) The Developer shall obtain, in a timely manner, and pay for all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of the City Code and all other applicable federal, state and local laws and regulations which must be obtained or met before the Construction on any part of the Block V Project may be lawfully commenced. Without limitation to the foregoing, the Developer shall request and obtain from the City all necessary variances, conditional use permits, or zoning changes for the Construction.

(d) The Developer shall require each contractor or subcontractor performing any Construction Services and/or providing any materials, equipment or supplies for Construction to secure any and all required licenses, permits or similar authorizations necessary to perform Construction Services and/or to provide such materials, equipment or supplies.

(e) All Construction Services shall be performed in a competent and professional manner, in Good Faith and pursuant to Good Industry Practice. The Developer shall require each contractor or subcontractor performing any Construction Services to employ or contract suitable employees, engineers, contractors and subcontractors, and to extent required, all

such employees, engineers, contractors and subcontractors shall have a valid license for the services or work to be performed. If any employee, engineer, architect, contractor or subcontractor appears incompetent, disorderly or disobedient to the Developer, or do not have the required license, such person or entity shall, upon request of the City Engineer, City Planner or City Inspector, be immediately discharged, at the sole cost and expense of the Developer.

(f) All contractors and subcontractors performing any Construction Services shall be required to comply with any and all federal, state, county, local and municipal laws, statutes, codes, regulations, resolutions, rules, ordinances and policies effective when the Construction Services are being or are to be performed (inclusive of the City Code), and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also to pay all taxes imposed by any federal, state, county, local or municipal law, statute, code, regulation, resolution, rule or ordinance for any employment insurance, pensions, old age retirement funds or any similar purpose and to furnish all necessary reports and information to the appropriate federal, state, county, local and municipal agencies with respect to all of the foregoing.

(g) Construction of any public streets, water, sanitary, storm sewer improvements or any other public infrastructure as part of any part of the Block V Project shall be constructed and installed, at the Developer's cost and expense, on property platted as public right of way or easement to the City so as to allow the City to service said infrastructure. All of such Construction shall be warranted by each contractor or subcontractor for a period of one (1) year commencing from the date said work is determined to be Finally Completed.

(h) All contractors and subcontractors performing any Construction Services shall adequately and properly protect the Construction Services to be performed by it, to be responsible for damages to persons and property occasioned by its failure to do so and to be responsible for any defective or improper work or material caused by its failure to do so. All contractors and subcontractors shall be required to acknowledge and agree that when and as required by the Developer's Engineer and Architect and/or the City Engineer, City Planner or City Inspector, the contractor and/or subcontractor shall correct, replace and/or re-execute faulty or defective work done and/or materials furnished.

(i) All contractors and subcontractors performing any Construction Services shall be required to erect and maintain good and sufficient guards, barricades, signage and signals at or near the Block V Project (including erecting and maintaining such guards, barricades, signage and signals as required under the Manual of Uniform Traffic Control Devices) and shall in all cases maintain a safe passageway at all streets, road crossings, sidewalks, crosswalks and street intersections. In the event safe passageway at any street, road crossing, sidewalk, crosswalk or street intersection cannot be maintained, the respective contractor or subcontractor shall erect and maintain such guards, barricades and signals as required under the Manual of Uniform Traffic Control Devices for the temporary closure thereof. All contractors and subcontractors performing any Construction Services shall be solely responsible for initiating, maintaining and supervising all safety precautions and measures in connection with the performance of Construction Services, and shall take all safety precautions with respect to the Construction Services and shall comply with all applicable laws, ordinances,

rules and regulations, and lawful orders of any public or governmental authority for the safety of persons or property. Without limiting the foregoing, but in addition thereto, all Construction Services shall be conducted and performed in such a manner as to not create any unsafe condition for pedestrians, bicyclists or motorists.

(j) All contractors and subcontractors performing any Construction Services shall be required: (1) to assume the entire risk, responsibility, payment and liability for all actions, claims, demands, liabilities, losses, damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, relating to or in any manner connected with, their respective Construction Services or occurring or resulting from the use of materials, equipment, instrumentalities or other property, and (2) to indemnify, save and hold the City and JDA and their respective agents, officers, employees, contractors and other sub-contractors harmless from all such claims and legal fees and disbursements paid or incurred to enforce such indemnity provisions. Without limiting the foregoing, the indemnification obligation of all contractors and subcontractors shall include the obligation and duty to defend the City and the JDA, from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the contractor's or subcontractor's indemnification obligations.

(k) All contractors and subcontractors performing any Construction Services shall be required to obtain, maintain, and pay for such workers' compensation insurance for all of its employees as may be required by law; comprehensive general liability insurance, builder's risk and comprehensive automobile liability insurance, in amounts that are Usual and Customary (with a minimum of \$2,000,000 bodily injury, \$2,000,000 property damage and \$4,000,000 umbrella for general liability policy limits, for builder's risk being in the amount of the Construction contract price and \$2,000,000 per person, \$4,000,000 per incident and \$2,000,000 property damage for automobile policy limits) and with reputable insurance companies to from and against claims for bodily injury or death, for damage to property occurring upon, in or about the area in which the work is to be performed. In connection, all contractors and subcontractors performing any Construction Services shall cause the City and/or the JDA to be named as an additional insured under each of said insurance policies covering the City for all matters arising from or related to their respective Construction Services that may occur on or within any property owned by the City and/or the JDA. All insurance required of a contractor or subcontractor performing Construction Services shall be continuously maintained until the Block V Project is Finally Completed and a Certificate of Occupancy has been obtained.

2.2.2 Nothing herein shall relieve the Developer from its obligation to have the Construction of the Block V Project comply with the City's construction and building permitting processes, including without limit any process and approvals, authorizations and permits required under Chapters XVIII and XIX of the City Code. The Parties agree and acknowledge that this Agreement does not constitute a review or approval of any permits, authorizations, approvals, or licenses required by the City.

2.2.3 In the event Developer desires to make any material changes to any part of the Block V Project after its approval by the City, including a change order during Construction, the Developer, before initiating such change shall submit the proposed change to the City for its prior review and approval by and through the City Engineer, City Planner, City Inspector and

City Assessor. If the City Engineer, City Planner, City Inspector and City Assessor determine such change (a) conforms to the requirements of this Agreement, (b) complies with the City Code and all applicable federal, state and other applicable local laws, and (c) does not materially reduce or increase the Targeted Property Value, the City shall approve the proposed change and notify Developer in writing of its approval. In the event the City does not respond to the proposed change within thirty (30) calendar days the proposed change will be deemed to have been approved by City.

2.2.4 The City, by and through the City Engineer, City Planner, City Inspector, City Assessor and other officer, employee or agent of the City, shall have the right to access, at any time, to the Block V Property to inspect, review and/or oversee the Construction, including but not limited to conducting an inspection or review to determine compliance with the terms of this Agreement, whether the Block V Project is Substantially Completed and Finally Completed and whether a Certificate of Occupancy for the Block V Project should be issued.

2.2.5 Upon the Block V Project becoming Substantially Completed, the Developer shall provide the City and JDA with lien waivers from any and all of the contractors, subcontractors, and all suppliers who provided any services, work, supplies or materials for any part of the Block V Project, provided that the Developer retains the right to challenge any lien. In the event the Developer challenges any such lien, the Developer shall deposit with the City an amount of money that is equal to 150% of the amount being challenged and which funds shall be retained by the City until such challenge has been finally resolved, (whether by agreement or upon a final non-appealable judgment), and a lien waiver has been obtained from said contractor.

2.2.6 Copies of the Block V Plans, and all other drawings, prints, plans, and field notes prepared by the Developer Engineer and Architect and other information pertinent to the Construction shall be furnished to the City and become the property of the City.

2.2.7 During Construction, the Developer shall make periodic reports, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of Construction. This reporting requirement by the Developer shall continue until both of the following events have occurred: (a) the Block V Project is found to be Finally Completed and (b) a Certificate of Occupancy has been issued for the Block V Property.

SECTION 3 – PAYMENT IN LIEU OF PROPERTY TAXES

3.1 **Block V PILOT.** On October __, 2021, the City Council, by and through the Block V PILOT Resolution, approved the Block V PILOT pursuant to N.D.C.C. ch. 40-57.1-03(2), which shall be determined and calculated in accordance with this Agreement, provided the conditions precedent described in Section 3.3 below are satisfied.

3.2 **Block V PILOT.**

3.2.1 **90% of Incremental Value.** Each year during the term of this Agreement, the Block V PILOT granted to the Developer shall be equal to product of 90% multiplied by the difference of the Incremental Property Value minus the Original Property Value. By way of

example and illustration purposes only, if the Incremental Property Value for the 2023 Assessment Date is \$5,200,000 and for the 2024 Assessment Date is \$5,252,000.00, the Block V PILOT for the 2023 and 2024 years shall be as follows:

	<u>2023 Year</u>	<u>2024 Year</u>
Incremental Property Value:	\$5,200,000.00	\$5,252,000.00
Minus Original Property Value	(<u>\$1,558,200.00</u>)	(<u>1,558,200.00</u>)
Sub-Total	\$3,641,800.00	\$3,693,800.00
Multiplied by 90%	<u>x 90%</u>	<u>x 90%</u>
Block V PILOT	<u>\$3,277,620.00</u>	<u>\$3,324,420.00</u>

3.2.2 Exemption for the Block V PILOT.

(a) Commencing on the first Assessment Date occurring after the Block V Project is Finally Completed and for each Assessment Date thereafter during the term of this Agreement, the Block V PILOT, calculated pursuant to Section 3.2.1 above, shall be exempt from and not subject to property tax assessment or levy under N.D.C.C. Title 57. The Parties acknowledge and agree the anticipated first Assessment Date after the Block V Project is Finally Completed will be February 1, 2023.

(b) The City Assessor shall deduct the Block V PILOT, as calculated each year, from the the Incremental Property Value for such year, and the resulting amount plus the true and full value of the Block V Property land for each year shall be the Block V PILOT True and Full Value.

(c) During the term of this Agreement, for purposes of determining the amount of the payment in lieu of taxes for the Block V Property and certified pursuant to N.D.C.C. § 40-57.1-03(4), the property taxes assessed and levied against and to the Block V Property under N.D.C.C. Title 57 shall be based on and derived from the Block V PILOT True and Full Value, and the City Assessor shall report the Block V PILOT True and Full Value as the true and full value of the Block V Property for such property tax assessment and levy purposes. By way of example and illustration purposes only, if the Block V PILOT, as calculated under Section 3.2.1 for the year 2023 is \$3,277,620.00 and for the year 2024 it is \$3,324,420.00, and the Incremental Property Value for such years is \$5,200,000.00 and \$5,252,000.00 respectively, and the true and full value of the Block V Property land is \$112,500.00 in both 2023 and 2024, then the Block V PILOT True and Full Value shall be as follows:

	<u>2023 Year</u>	<u>2024 Year</u>
Incremental Property Value:	\$5,200,000.00	\$5,252,000.00

Minus Block V PILOT	(\$3,277,620.00)	(\$3,324,420.00)
Plus true and full value of the Block V Property land	<u>\$112,500.00</u>	<u>\$112,500.00</u>
Block V PILOT True & Full Value	<u>\$2,034,880.00</u>	<u>\$2,040,080.00</u>

3.2.3 *Term of Block V PILOT.* Subject to early termination under Section 3.2.4 and Section 7.5, the Block V PILOT shall commence on the first Assessment Date for which the Block V PILOT is calculated under Section 3.2.1 and shall terminate on the earlier of (a) the Calendar Day that all amounts due and owing under the Block V Note and Block V Mortgage have paid in full or (b) the twenty year anniversary of the first Assessment Date for which the Block V PILOT is calculated under Section 3.2.1.

3.2.4 *Early Termination of Block V PILOT.* Notwithstanding anything to the contrary, the Block V PILOT shall immediately terminate, be revoked and become null and void, and be of no force or effect upon the occurrence of any of the following events (that are specified under N.D.C.C. § 40-57.1-03(6)):

- (a) Information provided by the Developer during the negotiation and deliberation of the Block V PILOT has proven to be inaccurate or untrue;
- (b) The use of the Block V Property by the Developer does not comply with the reasonable expectations of the City Council at the time the Block V PILOT was approved;
- (c) The Block V Property has been improved to a substantially greater extent than the City Council reasonably anticipated at the time the Block V PILOT was approved; or
- (d) There has been a change of ownership of the Block V Property since the Block V PILOT was approved.

3.2.5 *Consent to Block V PILOT.* The Developer requests, consents to, and approves the creation of the Block V PILOT, as allowed under N.D.C.C. § 40-57.1-03(2). The Developer expressly waives any objection to any irregularity with regard to the creation of the Block V PILOT and/or the Block V PILOT Resolution. Further, the Developer waives all rights to appeal (pursuant to N.D.C.C. § 28-34-01 or under any other provision of law) such action of the City to a court. This waiver is express, and the Developer acknowledges that it is waiving any and all rights of appeal regarding any irregularity with regard to the creation of the Block V PILOT and/or the Block V PILOT Resolution.

3.3. Conditions Precedent for Block V PILOT. The granting of the Block V PILOT is subject to the satisfaction of the following conditions precedent:

3.3.1 The Block V Project is Finally Completed and a Certificate of Occupancy has been issued for the Block V Property relating to and resulting from the Block V Project.

3.3.2 The Developer has executed and delivered the documents required under Section 4.1.2 for the Block V Loan.

3.3.3 The conditions precedent described in Section 4.1.3 for the Block V Loan have been satisfied.

3.3.4 There has been no event of default under this Agreement or Other Block V Agreements by the Developer or any other Person obligated thereunder.

3.3.5 On each Assessment Date for which the Block V PILOT is calculated under Section 3.2.1, there has been no event of default under this Agreement or the Other Block V Agreements by the Developer or any other Person obligated thereunder.

3.3.6 On each Assessment Date for which the Block V PILOT is calculated under Section 3.2.1, the representations and warranties of the Developer, described in Section 5 are true and correct.

SECTION 4 – BLOCK V LOAN

4.1 Block V Loan

4.1.1 Block V Loan. Upon satisfaction of conditions precedent described in Section 4.1.3 below, and relying on the representations and warranties contained in this Agreement, at the Block V Loan Closing, the JDA agrees to make the Block V Loan to the Developer evidenced by the Block V Note in the original principal amount of \$900,000.00.

4.1.2 Block V Loan Documents. At the Block V Loan Closing, the following documents shall be delivered to the JDA:

- (a) The Block V Note executed by the Developer.
- (b) The Block V Mortgage executed by the Developer to irrevocably grant, bargain, sell, convey and mortgage to the JDA a first lien in and to the Block V Property. The JDA shall be authorized to record the Block V Mortgage in the real estate records of the Block V Property.
- (c) A Block V Guaranty executed by each Block V Guarantor.
- (d) An affidavit executed by the Developer certifying the representations and warranties of the Developer, described in Section 5, are, as of the Block V Loan Closing true and correct

4.1.3 Conditions Precedent to Block V Loan. The Block V Loan by the JDA is subject to the satisfaction prior to the Block V Loan Closing of the following conditions precedent:

(a) The Block V Project is Finally Completed and a Certificate of Occupancy has been issued for the Block V Property resulting from the Block V Project.

(b) The JDA shall have received an irrevocable Commitment (as defined below) or applicable down-dated Commitment to issue a title insurance policy (dated as of the date of Block V Loan Closing) naming the JDA as the insured for the amount of the Block V Loan, showing that upon recording of the Block V Mortgage the JDA shall have a valid and first mortgage lien in and to the Block V Property, and superior to any and all interests that may exist in the Block V Property.

(c) The fully executed and delivered documents and agreements required under Section 4.1.2 have been delivered.

(d) As of the Block V Loan Closing, the conditions described in Section 3.3 have been satisfied Guarantors have executed and delivered to the City their respective Guaranty.

(e) As of the Block V Loan Closing, there has been no event of default under this Agreement or Other Block V Agreements by the Developer or any other Person obligated thereunder.

(f) As of the Block V Loan Closing, the representations and warranties of the Developer, described in Section 5, are true and correct.

4.1.4 Block V Loan Closing.

(a) Assuming the conditions precedent described in Sections 3.3 and 4.1.3 have been satisfied, the Block V Loan Closing shall occur ten (10) Calendar Days after the date the Block V Project is Finally Completed, , provided, however, if all the conditions and contingencies set forth in this Agreement have not been satisfied by said date, then Closing shall occur within ten (10) days of the date the same have been met or waived in writing by the City and the JDA.

(b) The “Block V Loan Closing” shall be the date that Developer and Guarantors execute and deliver the documents and agreements required under Section 4.1.2 and the JDA delivers to the proceeds of the Block V Loan to the Developer, and the Developer and the JDA shall have performed any other obligations then to be performed to consummate the Block V Loan transaction, all in accordance with the terms of this Agreement. The date the Closing actually occurs shall be referred to herein as the “Block V Loan Closing Date.”

(c) The Block V Loan Closing shall be held at __:__ __.m. on the Block V Loan Closing Date at the offices of the JDA or at such other place, date and time as Seller and Buyer may agree.

SECTION 5 – DEVELOPER REPRESENTATIONS/INDEMNITY/RELEASE OF LIABILITY

5.1. Representations and Covenants of the Developer. The Developer represents and covenants to the City, which the City has relied on in entering into this Agreement and shall continue to rely on in the execution of and performance of this Agreement:

5.1.1 The Developer is a limited liability company duly organized and validly existing under the applicable laws of the State of North Dakota.

5.1.2 The Developer is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement.

5.1.3 The Developer is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

5.1.4 This Agreement to which the Developer is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

5.1.5 There is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

5.1.6 The Developer's undertakings pursuant to this Agreement are for the purpose of developing the Block V Property.

5.1.7 Developer further recognizes that, in view of (a) the importance of the development of the Block V Property to the general welfare of the City; and (b) the substantial financing and other public aids that were made available by the City and JDA for the purpose of making such development possible, the qualifications and identity of Developer are of particular concern to the City and JDA. Developer further recognizes that it is because of such qualifications and identity that the City and JDA is entering into this Agreement with Developer, and, in doing so, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby to be performed.

5.1.8 The Developer will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

5.2 Indemnity.

5.2.1 The Developer agrees to and shall indemnify, save and hold the City and JDA, its agents, officers, employees, contractors and other sub-contractors harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, which arise out of, result from, relate to or are in connection with (a) any acts or omissions of the Developer under this Agreement and other agreement to be executed in connection herewith, (b) the acquisition, construction, installation, ownership, maintenance, and operation by Developer of the Block V Project.

5.2.2 The Developer agrees to assume the entire risk, responsibility, payment and liability for all actions, claims, demands, liabilities, losses, damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, relating to or in any manner connected with the Developer's acts or omissions.

5.2.3 Without limiting the foregoing, the indemnification obligation of the Developer shall include the obligation and duty to defend the City, from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the Developer's indemnification obligations.

5.3. Release of Liability The Developer hereby releases and forever discharges the City and JDA from any and all claims or causes of which may result from a loss of the tax incentive as provided herein, whether by legislative action or judicial decision. The Developer understands and agrees that the tax incentive which is to be provided to the Developer pursuant this Agreement and Chapter 40-57.1 of the North Dakota Century Code is solely dependent upon the validity of said provisions and compliance with all of the provisions contained therein. The Developer has satisfied itself as to such validity and compliance and hereby waives any and all claims and causes of actions which it has or may have against the City and/or the JDA in the event of loss of the tax exemption for any reason.

SECTION 6 - DEFAULT BY DEVELOPER / REMEDIES OF CITY

6.1. Default By Developer. An event of default by Developer shall occur if any of the following occur:

6.1.1 The Developer fails to act or otherwise observe or perform any of the terms or conditions of this Agreement.

6.1.2 The Developer fails to observe or perform any of the other covenants, promise or agreement within the Other Block V Agreements, and/or any other Person obligated under the Other Block V Agreements fails to observe or perform any of the covenants or

agreements contained therein, and such default continues unremedied beyond the expiration of any applicable grace period which may be expressly allowed under the Other Block V Agreements.

6.1.3 Any representation or warranty by the Developer in this Agreement and/or the Other Block V Agreements or in any other agreement, certificate, request, or other document executed, furnished pursuant to or under this Agreement proves to have been incorrect in any material respect as of the date when made or on any Assessment Date.

6.1.4 The occurrence of an event described in Section 3.2.4 or Section 7.5 for early termination.

6.1.5 The Developer admits in writing the fact that its debts exceed a fair valuation of its property.

6.1.6 Any Guarantor admits in writing the fact that its debts exceed a fair valuation of the Guarantor's property.

6.1.7 The Developer or any Guarantor commences a voluntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

6.1.8 The Developer or any Guarantor makes an assignment for the benefit of its creditors.

6.1.9 The Developer or any Guarantor consents to the entry of an order for relief in an involuntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

6.1.10 The Developer or any Guarantor has entered against it by a court of competent jurisdiction a decree or order granting relief in any involuntary case under any applicable federal or state bankruptcy law, or appointing, with or without the consent of the Developer or any Guarantor, as the case may be, a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Developer or any Guarantor or for any substantial part of its property, or approving a plan for reorganization of the Developer or any Guarantor, or ordering the winding up or liquidation of their affairs, and such decree or order shall not be vacated, set aside or stayed for a period of thirty (30) consecutive days.

6.2. Remedies by City/JDA. Without in any manner limiting the termination provisions under Section 3.2.4 and Section 7.5, but in addition thereto, upon the occurrence of an event of default by the Developer, the City and/or the JDA may:

6.2.1 Pursue and obtain any and all other available legal or equitable remedies against the Developer for such default, including but not limited to the City's termination of this Agreement, the Block V PILOT and all of the Developer's rights under this Agreement and/or the Other Block V Agreements.

6.2.2 Pursue and obtain any and all other available legal or equitable remedies against any Person obligated under this Agreement and/or the Other Block V Agreements, including but not limited to the termination of all of said Person's rights under this Agreement and/or the Other Block V Agreements.

6.2.3 Terminate the Block V PILOT and all of the attending tax incentives.

6.2.4 Pursue any and all remedies available under the Block V Note, Block V Mortgage and/or the Block V Guaranties, including without limit accelerating the amount due and owing under the Block V Note, the foreclosure of the Block V Mortgage and pursuing payment from any and all Block V Guarantors.

6.2.5 Pursue and obtain against the Developer and each Guarantor full and complete reimbursement for all costs and expenses the City has incurred under this Agreement, including recovery of the then outstanding balance of the Block V Note and Block V Mortgage.

6.2.6 Pursue and seek for all damages or other remedies available to the City and/or the JDA.

6.3 **Remedies by City Cumulative.** All rights and remedies of the City and/or the JDA from an event of default shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

6.4. **Non-Waiver of Remedy.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice except as may otherwise be provided by law

SECTION 7 – MISCELLANEOUS PROVISIONS

7.1. **Future Special Assessments.** The Developer acknowledges and agrees nothing herein shall preclude future special assessments for later improvement districts benefitting the Block V Property being levied and apportioned as special assessments against the Block V Property.

7.2. **Payment of Taxes and Special Assessments.** Developer shall pay when due all property taxes and any future special assessments levied, assessed and/or payable with respect to the Block V Property in accordance with the provisions of applicable laws of the State of North Dakota.

7.3. **No other property tax incentives.** The Developer acknowledges and agrees that while any amount is outstanding under the Block V Note, no portion of the Block V Property shall be eligible for any property tax incentive, including but not limited exemptions described in N.D.C.C. § 57-02.2-03 or other incentive that serves to lower or reduce the value of any part of the Private Components.

7.4. Assignment. Except as otherwise upon the prior written consent by the City and JDA, the Developer agrees, on behalf of itself, its officers, and partners and the personal representatives of the same, and any other person or persons claiming any benefits under the Developer by virtue of this Agreement, that this Agreement and the rights, interests, and benefits hereunder will not be assigned, transferred, pledged, or hypothecated in any way by the Developer or by any other person claiming under it by virtue of this Agreement, and will not be subject to execution, attachment, or similar process. Any attempt at assignment, transfer, pledge, or hypothecation or other disposition of this Agreement or of such rights, interests, and benefits contrary to the foregoing provisions or the levy of any attachment or similar process, will be null and void and without effect.

7.5. Discontinued Business Operation. In the event the Developer discontinues its business operations on the Block V Property, except for periods of remodeling/renovation or in the event of damage caused by fire, flood, or natural disaster, this Agreement and the Block V PILOT shall immediately terminate, become void and be of no force or effect.

7.6. Severability. If any of the provisions contained herein shall for any reasons be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions contained herein.

7.7. Entire Agreement. This Agreement constitutes the sole and entire agreement and understanding between the Parties hereto as to the subject matters hereof, and supersedes all prior discussions, agreements and understandings of every kind and nature between them as to such subject matter.

7.8. Amendments. Neither the Agreement nor any term or provision hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both Parties hereto.

7.9. Change in the Law. The Developer will ensure that the Block V Project is performed in accordance with the terms of this Agreement following any Change in Law. If a Change of Law occurs or will occur within one hundred eighty Calendar Days, any Party may notify the other Party and include in such notification: (i) an opinion on its likely effects; (ii) any necessary changes to the Project or implementation of this Agreement, including the full detail of the procedure for implementing such changes; and (iii) amendments (if any) required by this Agreement. After either Party delivers a notice of a Change in Law, the Parties shall meet and discuss the issues referred to in such notice and any ways in which the Developer can mitigate the effect of the relevant Change in Law.

7.10. Legislative and Tax Law Disclosure. The Developer acknowledges and agrees that the authority of the City to create, impose, and administer the Block V PILOT is derived from North Dakota statutory authority and the North Dakota Legislature has the power to amend, repeal, and replace any and all laws relating to tax increment financing, property tax valuation, and collection.

7.11. Authority. The Parties to this Agreement acknowledge, warrant and represent that each has the full right, authority and power to enter into this Agreement. The Parties to this Agreement further acknowledge, warrant and represent that the execution by the individuals noted below for such Party, and the delivery and performance by the Parties of this Agreement has been and/or shall be duly authorized by all necessary action of the Parties and no other action on the part of the respective Parties is required in connection therewith and that this Agreement and each agreement, document and instrument executed and delivered pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of the respective Parties enforceable in accordance with their terms.

7.12. Memorandum of Agreement. The City and the Developer agree to execute and deliver on the date of the signing of this Agreement a memorandum or short form of this Agreement in a form sufficient to put all contractors, suppliers, and the public on notice of the existence of the Agreement with respect to the Block V Property. A copy of this Agreement may be fixed to the memorandum of Agreement. The Developer shall pay all costs charged by the State of North Dakota and Grand Forks County to record the memorandum of Agreement. The Developer agrees that within ten (10) Calendar Days following the expiration or earlier termination of this Agreement, a memorandum noting such expiration or termination which may be executed by the City and recorded in the official records of Grand Forks County, North Dakota, at the City's sole cost and expense.

7.13. Non-Merger. None of the provisions of this Agreement shall be merged by reason of any deed or other instrument transferring any interest in any part of the Block V Property or any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

7.14. Headings. All titles or headings to articles, sections, subsections or other divisions of this Agreement or exhibits hereto are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the Parties hereto.

7.15. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota and the Ordinances of the City of Grand Forks and any action or claim related thereto shall be brought in the District Court for Grand Forks County, North Dakota.

7.16. Interpretation and Administration. Notwithstanding anything to the contrary, the City Council shall have full power and authority to interpret, construe, and administer this Agreement, and its interpretations and construction thereof and action thereunder will be binding and conclusive on the Parties for all purposes.

7.17. Waivers. One or more waivers by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either Party with respect to any

act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

7.18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be considered an original.

7.19. No Third-Party Beneficiary. This Agreement is intended for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns. No other person or entity shall have any right to rely on this Agreement or to claim or derive any benefit therefrom absent the expressed written consent of the Party to be charged with such reliance or benefit.

7.20. Relationship of Parties. The Parties shall perform as independent contractors under this Agreement. Each Party, its employees, agents, and representatives are not employees of the other Party for any purpose, including, but not limited to, the application of the Social Security Act, the North Dakota Unemployment Compensation Act, and the North Dakota Workers' Compensation Act. No part of this Agreement shall be construed to represent the creation of an employer/employee relationship. Each Party will retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

7.21. Cooperation. The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

7.22. Singular and Plural. Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

7.23. References. The words “herein,” “hereof,” “hereunder” and other words of similar import when used in this Agreement refer to this Agreement as a whole, and not to any particular article, section or subsection. Any reference herein to a Section or Subsection shall be deemed to refer to the applicable Section or Subsection of this Agreement unless otherwise stated herein. Any reference herein to an Exhibit shall be deemed to refer to the applicable Exhibit attached hereto unless otherwise stated herein.

7.24 Authorized Representatives – Construction of Block V Project.

7.24.1 With respect to matters relating to the Construction of the Block V Project, the City and Developer hereby designate the following individuals as their initial representatives, respectively on their respective behalf:

City Representative:

City Inspector

Developer Representative: _____

The above-named representatives will be reasonably available to each other and will have the authority to issue instructions and other communications on behalf of the City and Developer. The above-named representatives shall not have the authority to make decisions or give instructions binding upon the City or Developer, except to the extent expressly authorized by the City or Developer, as the case may be, in writing, or with respect to the City Representative, as may be authorized under the City Code or under applicable policies of the City.

7.24.2 Any reference herein to City or JDA approval or consents shall mean any process of the City to approve or consent to a particular matter under the City Code, or as may be permitted under applicable policies of the City or JDA.

7.24.3 In the event either a Party designates a different representative, it will give the other Party written notice of the identity of and contact information for the new representative, as the case may be.

7.24. Notices. Any notice required or desired to be served by either Party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

To the City and JDA:
255 North 4th Street
Grand Forks, ND 58201

To the Developer:

The provisions of this Section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

7.25. Time of the essence. Time is of the essence for all matters and obligations under this Agreement and all documents and agreements referenced herein.

7.26. Performance of Additional Acts. The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

7.27 Binding Effect. This Agreement will inure to the benefit of and is binding upon the City and the Developer, and their respective successors and assigns.

BLOCK V, LLC,
a North Dakota limited liability company

By: _____
Its: _____
Dated: _____

“Developer”

CITY OF GRAND FORKS,
a North Dakota municipal
corporation

By: Brandon Bochenski
Its: Mayor
Dated: _____

Attest:

By: Maureen Storstad
Its: City Auditor
Dated: _____

“City”

GRAND FORKS GROWTH FUND

By: Jeannie Mock
Its: Chairperson
Dated: _____

“JDA”